S.B. CIVIL SECOND APPEAL NO.306/2007.

Kana Ram Vs. Ram Chandra & Anr.

Date of Order :: 25th July 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. R.K. Soni for Mr. I.R. Choudhary, for the appellant.

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By way of this Second appeal under Section 100 of the Code of Civil Procedure, the defendant-appellant seeks to question the judgment and decree dated 15.11.2006 passed by the learned Additional District Judge, Didwana dismissing his appeal against the judgment and decree dated 02.09.2002 passed by the learned Civil Judge (Senior Division), Didwana whereby the suit filed by the plaintiffs-respondents for eviction and recovery of arrears of rent was decreed.

It has been strenuously contended by the learned counsel for the appellant that the findings recorded by both the courts below are perverse and are based on misreading of evidence and hence, deserve interference in second appeal.

From the impugned judgment and decree it appears that the plaintiffs-respondents filed the suit with the submissions that on 22.09.1998, the suit premises situated at village Chhoti-Khatu, Tehsil Didwana were let to the defendant, upon his executing a rent note at a monthly rent of Rs.1,150/- that was revisable by enhancement of Rs.200/- per month every year. The plaintiffs alleged that the defendant did not comply with the requirements of the rent note and neither handed over

the premises on 21.09.1999 nor executed a fresh rent note and deposited some part payment intermittently in their bank account. According to the plaintiffs, by a notice sent on 30.08.2001 by registered post the tenancy was terminated from the mid-night of 21.09.2001. The plaintiffs submitted that despite termination of tenancy, the defendant has not handed over vacant possession of the suit premises and that an amount of Rs.10,200/- was due towards rent. The plaintiffs claimed decree for eviction with mesne profits @ Rs.2,000/- per month.

The defendant-appellant admitted that the premises were taken on rent by him at Rs.1,150/- per month but denied the assertion of the plaintiffs about enhancement of rent by Rs.200/- per month every year; and submitted that if the plaintiffs has obtained any such recital in the rent note dated 22.09.1998, the same was not lawful. The defendant also alleged that the notice sent by the plaintiffs was incorrect and tenancy cannot be terminated without any reason. It was also asserted that the defendant was regularly depositing the rent at Rs.1,150/- per month in the savings bank account of the plaintiffs and he was ready to make payment of the amount considered due by the plaintiffs; however, the defendant denied entitlement of the plaintiffs to recover mesne profits at Rs.2,000/- per month.

The learned trial court framed the following issues for determination of the questions involved in the suit:-

"(1) आया वादीगण ने विवादित परिसर जिसका विवरण वादपत्र की चरण सं. 2 में अंकित है, 1150/- रूपये प्रतिमाह की दर पर प्रतिवादी को किराये पर दी थी, की किरायेदारी नोटिस दि0 30.8.01 पंजीकृत डाक दिनांक 31.8.01 द्वारा दिनांक 21.9.01 की मध्य रात्रि से समाप्त कर दी । अत: वादीगण विवादित परिसर का वास्तविक कब्जा प्राप्त करने के अधिकारी है ?
---- वादीगण

(2) आया वादीगण वादपत्र की चरण सं. 6 में वर्णितानुसार किराये की बकाया राशि 10200/- रूपये दिनांक 21.9.01 तक तथा तत्पश्चात 2000/- रूपये मासिक की दर से अन्त:कालीन लाभ प्राप्त करने के अधिकारी है ?
---- वादीगण

(3) आया वादीगण को कोई वाद कारण ही पैदा नहीं होता है ?
---- प्रतिवादी

(4) अनुतोष ?

After taking the evidence adduced by the parties, the learned Civil Judge (Senior Division), Didwana decided issue No.1 in favour of the plaintifss with reference to the rent note (Ex.1) and the notice terminating tenancy (Ex.2) that was served upon the defendant by registered post A.D. (Exs. 3 & 4). The learned Judge observed that the defendant has admitted the receipt of such notice and has not been able to substantiate as to how and why the plaintiffs were not entitled to terminate his tenancy. With the finding that the tenancy was

validly terminated, the learned Judge held that the plaintiffs were entitled to recover possession of the suit premises. The learned Judge also found proved the fact that the rent was agreed to be enhanced by Rs.200/- per month every year; and calculating on that basis and after deducting the amount deposited by the defendant-appellant, found due a sum of Rs.10,200/- against the rent payable for the premises; and further held the plaintiffs entitled for mesne profits @ Rs.1,750/- per month after enhancement of the rent as agreed. The learned trial court, accordingly, decreed the suit for eviction, for arrears of rent at Rs.10,200/-; and allowed mesne profits to the plaintiffs @ Rs.1,750/- per month.

The learned appellate Court, after consideration of the evidence on record, endorsed the findings of the learned trial court and dismissed the appeal filed by the defendant-appeal.

Though it has been urged on behalf of the defendant-appellant that the findings of the learned courts below are perverse and suffer from misreading of evidence, it does not appear that any part of the material available on record has not been considered or misread by the learned courts nor does it appear that the impugned judgment and decree suffer from any such error of law that could give rise to a substantial question of law. It has also been contended that the tenancy could not have been terminated with any cause. The submission is not well founded and is contrary to the

unfettered right of a lessor under the Transfer of Property Act to terminate tenancy by way of a valid notice. The defendant-appellant has failed to show any infirmity in the notice terminating tenancy.

The learned subordinate courts cannot be said to have erred in passing and affirming the decree for eviction and arrears of rent calculated with reference to the agreement of the parties.

This Second appeal does not involve any substantial question of law and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

Mohan/-